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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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CANADA				
EXAMINER				
MAHMOUDZADEH, NIMA				
ART UNIT		PAPER NUMBER		
2477				
NOTIFICATION DATE		DELIVERY MODE		
11/19/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

forpara@smart-biggar.ca

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/825,649

**Applicant(s)**

PATERSON ET AL.

**Examiner**

NIMA MAHMOUDZADEH

**Art Unit**

2477

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☒ Newly proposed or amended claim(s) 12, 13 and 27 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 12, 13 and 27.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-11, 14-26 and 28-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☒ Other: See Continuation Sheet.

/N.M./

Examiner, Art Unit 2477

/Gregory B Sefcheck/

Primary Examiner, Art Unit 2477

Continuation of 13. Other: On page 13 of the applicant's response, the applicant argued that the prior art of the record fail to teach "measuring performance parameters between a first location and a second location in a communications network" of claim 1. The examiner respectfully disagrees. Paragraph [0021] of Purpura discloses the traffic control between two routers which can be traffic congestion control that has to be performed based on the measurements and performance data. On page 14 of the applicant's response, the applicant argued that the prior art of the record fail to teach "service-affecting event computation means for analyzing performance parameters measured by the performance measurement means" as recited in claim 1. The examiner respectfully disagrees. On page 7 of Kogan et al., the outage data that can be a service-affecting event is being collected which is a function of obtaining performance (being up or down) measurement. On page 14 of the applicant response, the applicant argued that the prior art of the record fail to teach "determining components within the communications network which are related to dependability metrics to be reported upon." of claim 1. The examiner respectfully disagrees. As shown in Fig. 1 and page 5, of Kogan et al., an agent perform the function of outage measurement within individual elements and function of reporting the failure events periodically to NMS which are dependent on interaction between the measuring elements and NMS. On page 15 of the applicant response, the applicant argued that the prior art of the record fail to teach "a user interface for supplying the dependability measurement system with system parameters and control information" as recited in claim 1. The examiner respectfully disagrees. On page 5 of Kogan et al., there are two interfaces, one being flat for outage data and the other a control interface for configuration and management commands that can be a user interface. Also, on page 7 of Kogan et al., it is shown that the operator sets the threshold value at the time of outage measurement configuration. On page 17 of the applicant's response, the applicant argued that there is no suggestion of a desirability of the claimed invention in any of the references that would serve as a reason for one skilled in the art to combine the collection of references identified by the Examiner. The examiner respectfully disagrees. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify the communication between NMS and measurement agent(element) of Kogan et al. to include the traffic control function between two devices taught by Purpura in order to speed up the configuration/ traffic control and reduce the delay. The remainder of the claims and above means/function rejections remain rejected due to the above reasonings.